

AN ACT

ENTITLED, An Act to revise certain county zoning laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 11-2-49 be amended to read as follows:

11-2-49. Except as otherwise provided by § 11-2-60, the board shall provide for the appointment of a board of adjustment, or for the planning and zoning commission to act as a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter, shall provide that the board of adjustment may approve administrative actions, remedies, and procedures as authorized by § 11-2-53.

Section 2. Section 2. That § 11-2-53 be amended to read as follows:

11-2-53. The board of adjustment may:

- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant to this chapter;
- (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done; and
- (3) Approve certain conditional uses upon a showing by an applicant that standards and criteria stated in a relevant ordinance enacted pursuant to section 7 of this Act will be met.

Section 3. That § 11-2-58 be amended to read as follows:

11-2-58. In exercising the powers mentioned in § 11-2-53, all decisions of the board of adjustment to grant variances or conditional uses or in hearing appeals from any administrative order, requirement, decision, or determination may be appealed to the board of county commissioners in

accordance with the county ordinance, and any final decision of the board of adjustment or county commission shall be deemed a final administrative decision not subject to referendum or review. However, any aggrieved person or legal entity has the right to appeal as allowed in § 11-2-61.

Section 4. That § 11-2-59 be amended to read as follows:

11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation or conditional use in the ordinance.

Section 5. That § 11-2-60 be amended to read as follows:

11-2-60. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of county commissioners having adopted and in effect a zoning ordinance may act as and perform all the duties and exercise the powers of the board of adjustment. The chair of the board of county commissioners is chair of the board of adjustment as so composed. The concurring vote of at least two-thirds of the members of the board as so composed is necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any zoning ordinance, or to effect any variation or conditional use in the ordinance.

Section 6. That § 11-2-61 be amended to read as follows:

11-2-61. Any person or legal entity aggrieved by a decision of the board of adjustment or board of county commissioners may present to a court of record a petition duly verified, setting forth that the decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition shall be presented to the court within thirty days after the filing of the decision in the office of the board of adjustment or the office of the board of county commissioners.

Section 7. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as follows:

Any board of county commissioners may, by ordinance, referable pursuant to chapter 7-18A, adopt, amend, and repeal as many classifications of conditional uses as may be proper and necessary to regulate land development activities. Each ordinance providing for such conditional use shall establish standards and criteria sufficient to enable the board of adjustment to approve or disapprove proposed land development projects and to issue or deny appropriate permits pursuant to sections 2 to 5, inclusive, of this Act. Such standards and criteria shall include both general requirements for all conditional uses and, insofar as practicable, requirements specific to each designated conditional use.

Section 8. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as follows:

Any permit, issued pursuant to this Act, for a dairy or other animal feeding operation in compliance with such standards and criteria, including any permit for future expansion, shall be a vested compensable property right under the laws of South Dakota, but may be revoked for good cause.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1281

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1281

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State